IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9636 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASAN BILALBHAI BADSHAH

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for Petitioner as Amicus Curie

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 22/02/2000

ORAL JUDGEMENT

#. The petitioner - Hasan Bilalbhai Badshah has moved the present petition through Jail. The learned advocate Ms.Banna Datta was appointed as amicus curie vide earlier order dated 21-12-99 and is heard on behalf of the

petitioner while Mr.K.T.Dave, learned AGP is heard on behalf of respondents No. 1,2 & 3.

#. The detention order dated 7-5-1999 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu indicate that the petitioner is alleged to have been involved in 7 criminal cases registered against the petitioner at Bhavnagar "A" Division police station in between 1-9-96 and 20-3-1999. That the petitioner was released on bail on 14-1-1996 after he was arrested on 7-10-96 in the first case. The petitioner was arrested again on 21-1-1999 and released on bail in the last case on 20-7-1994. Over and above, that in all four witnesses, out of them two witnesses on 29-4-99 and on 30-4-99, the other two witnesses, on assurance of their anonymity have given their statement against the petitioner regarding the anti social activities respectively. That all said witnesses have referred to alleged incidents occurred on 12-4-99, 17-4-99, 21-4-99 and 27-4-99 respectively.

#. That on the basis of the said material, the respondent No. 2 - The District Magistrate as the detaining authority has come to the conclusion that the petitioner / detenu is a dangerous person within the meaning of Section 2(c) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The impugned order is challenged on numerous grounds on behalf of the petitioner. It has been submitted that the documents supplied to the detenu particularly the four statements of anonymous witnesses disclose that the privilege claimed by the detaining authority under Section 9(2) of PASA cannot be said to be genuine or bonafide as there is no verification by the detaining authority either in respect to facts stated therein or fear expressed by the respective witnesses. That thereby, the constitutional mandate under Article 22(5) is violated and has rendered the continued detention of the petitioner invalid.

#. In the instant case, on scrutiny of papers, it is found that the detaining authority has failed to made any endorsement disclosing verification made by him in respect to statements of four anonymous witnesses which have been referred to in the grounds of detention. That despite due service of rule, none of the respondents have filed any affidavit and as such there is no explanation in respect to non verification of the statement of anonymous witnesses by the detaining authority himself. Thus, the constitutional mandate contained vide Article 22(5) having been violated on account of the privilege claimed by the detaining authority in respect to four anonymous witnesses, the continued detention being invalidate, the impugned order is required to be struck down.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 7-5-99 passed by respondent No. 2 - The District Magistrate, Bhavnagar against the petitioner is hereby quashed and set aside. The petitioner - HASAN BILALBHAI BADSHAH is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 22-2-2000 [A.K.Trivedi, J.]

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